

THE ACQUISITION CORNER

1. **OMB Draft Revisions to A-76 Circular “Performance of Commercial Activities”**

14 November 2002, OMB published a revision of the A-76 Circular
www.whitehouse.gov/omb/

19 November 2002, Federal Register Notice – public comments on the revised Circular are due on or before 19 December 2002.

67 Federal Register 69769 – 69774, November 19, 2002.

2. **Final DOD Acquisition Rules**

A. Competition Requirements for Purchase of Services under Multiple Award Contracts.

67 Federal Register 65505 – 65509, October 25, 2002.

Implementation of section 803, Public Law 107-107, 115 Stat. 1178 – 1180, December 28, 2001 (FY 2002, Defense Authorization Act).

B. Contracting Officer Qualifications DFARS 201.603-2

67 Federal Register 65509, October 25, 2002.

C. Enterprise Software Agreements

67 Federal Register 65509 – 65512, October 25, 2002.

D. Performance Based Contracting using Federal Acquisition Regulation Part 12 Procedures

67 Federal Register 65512 – 65514, October 25, 2002.

Implementation of section 821, Public Law 106-398, 114 Stat. 1654A-217 to 1654A-219, October 30, 2000 (FY 2001, Defense Authorization Act).

E. Caribbean Basin Country – Honduras

67 Federal Register 65514, October 25, 2002.

F. Foreign Military Sales Customer Involvement – DFARS 225.7304

67 Federal Register 70323 – 70325, November 22, 2002.

G. Army Acquisition Address Number Changes
67 Federal Register 70325 – 70329, November 22, 2002.

3. **Proposed DOD Acquisition Rules**

A. DFARS Case 2002-D019, Transportation of Supplies by Sea –
Commercial Items.

67 Federal Register 65528 – 65529, October 25, 2002

Comments are due on or before 24 December 2002.

B. DFARS Case 2002-D013, Provisional Award Fee Payments

67 Federal Register 70388 – 70389, 22 November 2002.

Comments are due on or before 21 January 2003.

4. **Interesting General Accounting Office Decisions**

A. *National City Bank of Indiana*, B-287608.3, August 7, 2002

Sustained Protest – Agency cost realism analysis not supported by the record.

B. *Intermark, Inc.*, B-290925, October 23, 2002.

Sustained Protest – Suggested procedures to conduct procurement with Randolph-Sheppard preference with small business set-aside.

C. *OMNIPLEX World Services Corporation*, B-291105, November 6, 2002.

Sustained Protest – Record not clear whether the services to be provided by the “team members” were within the scope of offeror’s Federal Supply Schedule contract.

D. *Maryland Office Relocators*, B-291092, November 12, 2002.

Price adjustment evaluation in a fixed-price office relocation award.

E. *Network Security Technologies Inc.*, B-290741.2, November 13, 2002.

Violation of an GAO Protective Order – GAO may impose sanction of dismissal in future cases.

F. *Global Communication Solutions, Inc.*, B-291113, November 15, 2002.

Sustained Protest – Price consideration on a different basis [3 years] than stated in the solicitation [10 years].

5. **Notable Board or Court Decisions**

A. *S.P.L. Spare Parts Logistics, Inc.*, ASBCA Nos. 51118, 51384, September 6, 2002.

TACOM tank road wheel requirements case.

B. *United States of America ex rel, Brett Roby v. Boeing Co.*, 302 F.3d 637 2002 U.S. App. LEXIS 18700, Sixth Circuit, September 12, 2002.

Does FAR High-Value Item Clause (52.246-24) trump damages under the False Claims Act? NO.

C. *Florida Power & Light Co. et al., v. United States*, 307 F.3d 1364, 2002 U.S. App. LEXIS 20858, Federal Circuit, October 4, 2002.

Contracts for services provided by the United States were not contracts subject to jurisdiction under the Contract Disputes Act.

D. *John Doe, et al., v. United States* (Judge Robert H. Hodges, Jr.), 2002 U.S. Claims LEXIS 304, November 14, 2002.

The Court of Federal Claims found that the Department of Justice had “ordered or approved” overtime for attorney members of the class.

6. **Miscellaneous**

A. United States Supreme Court – Contract Disputes Act

United States Supreme Court on November 12, 2002, granted a writ of certiorari on the following question: “**Where a National Park Service regulation that states that National Park Service concession agreements are not contracts within the meaning of the Contract Disputes Act of 1978, 41 U.S.C. et seq. is valid**”.

National Park Hospitality Association v. Department of the Interior, et al., 2002 U.S. LEXIS 8331.

The District of Columbia Circuit opinion can be found at *AMFAC Resorts, LLC v. United States Department of the Interior*, 282 F.3d 818, 2002 U.S. App. LEXIS 3290.

B. Government Printing Office - - Administration Attempt to Break the Monopoly

Documentation:

OMB Memorandum M-2-07, Procurement of printing and Duplicating Through the Government Printing Office, May 3, 2002.

Section 4, Public Law 107-240, 116 Stat. 1492, October 11, 2002 (which amends section 117 of Public Law 107-229, 116 Stat. 1465, September 30, 2002).

Proposed FAR rule – Procurement of printing and Duplicating Through the Government Printing Office. 67 *Federal Register* 68914 – 68918, November 13, 2002.

GAO Opinion B-300192, November 13, 2002 (Failure to abide by section 117 would constitute a violation of the Antideficiency Act).

C. Cancellation of the DOD Acquisition Rules

On 30 October 2002, the Deputy Defense Secretary Paul Wolfowitz signed a memorandum that cancelled DOD Directive 5000.1, “The Defense Acquisition System”, DOD Instruction 5000.2, “The Operation of the Defense Acquisition System”, and DOD 5000.2-R, “Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information System Acquisition Programs”. New rules will be issued within 120 days. In attachments to the Wolfowitz memorandum, there were 40 pages of interim guidance.

LDA – 29 November 2002